

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

TERRILL DUANE MARSHALL,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:20-cv-01101-AMM-HNJ
)	
WARDEN THOMAS, et al.,)	
)	
Respondents.)	

MEMORANDUM OPINION AND ORDER

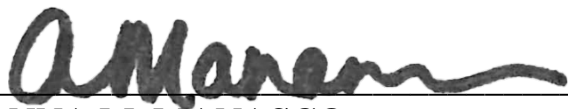
The magistrate judge filed an amended report on April 27, 2021, recommending the court deny petitioner Terrill Duane Marshall's motion for summary judgment, appointment of counsel, and an evidentiary hearing, Doc. 11, grant the respondents' motion for summary disposition, Doc. 5, and dismiss the petition without prejudice to Mr. Marshall to file a habeas petition in this court after he exhausts the remedies available to him in state court. Doc. 13.

Mr. Marshall notified the court that he agrees with the report and recommendation and that he has filed a Rule 32 petition in the Cherokee County Circuit Court. Doc. 14 (citing Case No. CC-2018-439.60). In his filing, Mr. Marshall requested that the court grant "any extension of time needed to re-file" his federal habeas petition and appoint appellate counsel upon re-filing. *Id.* The court **DENIES** Mr. Marshall's requests. Mr. Marshall may calculate how much

time he now has remaining on his habeas clock and timely file a federal habeas petition. If Mr. Marshall desires counsel upon filing his habeas petition, he may file an appropriate motion at that time.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court hereby **ADOPTS** the magistrate judge's amended report and **ACCEPTS** his recommendation. Accordingly, the court **DENIES** Mr. Marshall's motion for summary judgment, appointment of counsel, and an evidentiary hearing, Doc. 11, **GRANTS** the respondents' motion for summary disposition, Doc. 5, and **DISMISSES** the petition **WITHOUT PREJUDICE** to Mr. Marshall's opportunity to timely file a habeas petition in this court after he exhausts the remedies available to him in state court. The Clerk is **DIRECTED** to close this file.

DONE and **ORDERED** this 14th day of May, 2021.



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE